NO. 47630-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

ALLEN SELLERS,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Derek J. Vanderwood, Judge

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# BRIEF OF APPELLANT

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## A. ASSIGNMENT OF ERROR

There is insufficient evidence to support the conviction.

Issue pertaining to assignments of error

Appellant was arrested after attempting to cash a forged check. Where the evidence failed to establish that appellant knew the check was forged when he presented it for cashing or that he intended to injure or defraud anyone, must his conviction for forgery be reversed?

## B. STATEMENT OF THE CASE

### 1. Procedural History

On August 7, 2014, the Clark County Prosecuting Attorney charged appellant Allen Sellers with one count of forgery. CP 1-2; RCW 9A.60.020(1)(b). The case proceeded to jury trial before the Honorable Derek Vanderwood, and the jury returned a guilty verdict. CP 20. The court imposed a standard range sentence, and Sellers filed this timely appeal. CP 23, 36.

### 2. Substantive Facts

At around 10:40 a.m. on August 6, 2014, during normal business hours, Allen Sellers brought a check to the counter at Cash Connection and presented it for cashing. RP 53, 55, 66. The check was drawn on the Chase account of James Cox and made payable to Sellers. RP 84. Sellers

presented his identification along with the check. RP 56. Heidi Bennett-Koch, the Cash Connection employee, scanned the check and attempted to contact the person who wrote the check to verify funding and that it was written to the person cashing it. RP 53. There was no evidence that anything about the check looked suspicious or raised any red flags by its appearance; Bennett-Koch was following the standard procedure used for every check. RP 53.

When Bennett-Koch called Cox, he told her that the check had been stolen. RP 86. She then called 911. RP 59, 86. Sellers was still at the front counter of Cash Connection when Officer Troy Rawlins arrived. RP 60. Rawlins detained Sellers in handcuffs, took him outside to the patrol car, and read him his rights. RP 60.

Sellers was cooperative and he told Rawlins he was given the check by two friends who had stayed at his house the previous night, and he was trying to help them out by cashing it. RP 61-62. Sellers said he had asked if the check was stolen, and his friend said no. RP 67. James, the man who signed the check, told Sellers he had permission to use the checks on his grandfather's account. RP 61-62. After Sellers was detained in handcuffs for questioning about the check, Rawlins asked if Sellers thought the check was stolen, and at that point Sellers said yes. RP 63, 67. While Rawlins was talking to Sellers, another person who had

been inside the building walked out. Sellers identified him as Mario, the other person who had been staying at his house, and said Mario gave him the check. RP 63

James Cox testified that he did not write the check to Sellers. RP 86. His checkbook had been stolen from his truck on August 4, 2014. RP 85. When Rawlins searched Sellers incident to arrest he found no other checks in Sellers' possession. RP 69-70.

Petr Kuzmich, a friend of Sellers' testified he was at Sellers' house in August 2014 when a couple of other people were there. RP 94-95. One of the people wrote a check to Sellers. RP 94-95.

C. ARGUMENT

THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH THAT SELLERS KNEW THE CHECK WAS FORGED OR ACTED WITH INTENT TO INJURE OR DEFRAUD.

In every criminal prosecution, the State must prove all elements of a charged crime beyond a reasonable doubt. U.S. Const. amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970); State v. Crediford, 130 Wn.2d 747, 759, 927 P.2d 1129 (1996). Therefore, as a matter of state and federal constitutional law, a reviewing court must reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. State v.

Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); State v. Chapin, 118 Wn.2d 681, 826 P.2d 194 (1992); State v. Green, 94 Wn. 2d 216, 616 P.2d 628 (1980).

Sellers was charged with forgery under RCW 9A.60.020(1)(b), which required the State to prove that, with intent to injure or defraud, Sellers possessed, uttered, offered, disposed or, or put off as true a written instrument he knew to be forged. CP 1. The State presented evidence that Sellers possessed and attempted to cash a forged check. But the evidence did not establish either that Sellers knew the check was forged or that he acted with intent to injure or defraud.

When intent is an element of a crime, criminal intent may be inferred if the defendant's conduct and the surrounding circumstances "plainly indicate such intent as a matter of logical probability." State v. Woods, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991). Equivocal evidence cannot form the basis of an inference of intent to injure or defraud, however. State v. Vasquez, 178 Wn.2d 1, 7, 309 P.3d 318 (2013).

The evidence in this case was equivocal at best with regard to the elements of knowledge and intent. The evidence showed that Sellers went to Cash Connection during normal business hours to conduct a transaction normally conducted at that business. He presented his identification with

the check he attempted to cash. He stayed at the front counter after the police were called, and he cooperated with the police investigation. Sellers told Rawlins that when his friend gave him the check, he asked if it was stolen, and his friend said no. After Sellers was detained, handcuffed, Mirandized, and placed in a patrol car, however, he told Rawlins that he thought the check was probably stolen. This recognition based on how events had transpired since he presented the check for cashing does not establish that he knew the check was forged when he presented it or that he intended to injure or defraud anyone by cashing the check.

Possession of a forged instrument is not alone sufficient to establish intent to injure or defraud. Some corroborating evidence is needed. Vasquez, 178 Wn.2d at 13. For example, in State v. Scoby, 57 Wn. App. 809, 790 P.2d 226, aff'd 117 Wn.2d 55(1990), there was sufficient evidence that the defendant knew a bill was forged and he gave it to a clerk with intent to defraud, where the bill consisted of a $1 bill to which the corners of a $20 bill had been taped, and the defendant had in his possession both the mutilated $20 bill and the altered $1 bill. Here, by contrast, there was no evidence that the check on its face raised any suspicions that it was not authentic. The Cash Connection employee attempted to verify it merely as standard procedure. And there were no other stolen checks in Sellers' possession to indicate he knew the check

was forged. Without evidence establishing that Sellers knew the check was forged, the State cannot establish he intended to injure or defraud when he attempted to cash the check by presenting it with his identification in the normal course of business at Cash Connection. An inference of intent under these circumstances would relieve the State of its burden of proving this essential element beyond a reasonable doubt. See Vasquez, 178 Wn.2d at 13.

The record contains insufficient evidence to prove beyond a reasonable doubt that Sellers knew the check was forged and acted with intent to injure or defraud. Because the State failed to prove these essential elements of the offense, Sellers' conviction must be reversed and the charge dismissed.

D. CONCLUSION

The State presented insufficient evidence to establish the essential elements of forgery. Sellers' conviction must be reversed and the charge dismissed.

DATED December 23, 2015.

Respectfully submitted,

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Certification of Service by Mail

Today I caused to be mailed copies of the Brief of Appellant in *State v. Allen Sellers*, Cause No. 47630-4-II as follows:

Allen Sellers
3110 Bridge St.
Vancouver, WA 98661

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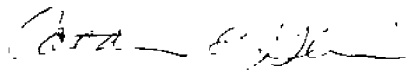

Catherine E. Glinski
Done in Port Orchard, WA
December 23, 2015

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